

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
August 28, 2015

Dateline Waukesha: So Close, Yet So Far.

During a hot dry Wisconsin summer what could be better than a refreshing dip in the cool, fresh, vast (did we mention vast?) water of Lake Michigan? And if you are a thirsty Wisconsin town sitting less than 20 miles from that lake what could be better than to let those vast, cool, fresh waters nourish the lawns and fill the glasses, pools and tubs of your citizens. Well nothing really, which is what Waukesha, Wisconsin, stands to get from its [efforts to tap into the lake](#) as a source of public water supply even though a sizable portion of the Lake belongs to [America's Dairyland](#). The reason is a 2008 agreement signed into federal law called the [Great Lakes Compact](#) that restricts the export of water out of the Great Lakes Basin. Wisconsin and the other Great Lakes States asked for and signed the Compact to prevent "their" water from being sent to remote and thirsty parts of the country and world. But it turns out that when it rains on Waukesha, those drops drain to the west and the Mississippi River, not to the tantalizingly close lake. And if the compact states make an exception for Waukesha [where do you draw the line](#) next time? Madison? Las Vegas? Saudi Arabia?

Judge Rules That MRGO Ecosystem Restoration Must Be Completely Paid for by the Federal Government

In a [ruling](#) that many in Louisiana have spent years [hoping for](#), a Federal district court judge stated that the Corps of Engineers' stance that the state owed 35% of the cost of the ecosystem restoration needed because of degradation caused by the Mississippi River Gulf Outlet was [arbitrary and capricious](#). Though the ruling is likely to be appealed, and even if upheld, the \$3 billion would still have to be appropriated by Congress, the ruling is a major victory for Louisiana

Whoa Nelly, Court Puts Brakes on WOTUS Rule

If you live in Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming that is. Ruling on a petition by those states, Federal Judge Ralph Erikson [issued a preliminary injunction](#) blocking the implementation of the recently promulgated Waters of the United States rule. That rule, itself necessitated by a U.S. Supreme Court decision, directs how the Army Corps of Engineers and the US EPA define wetlands and waters covered by the federal Clean Water Act. Judge Erikson found that the states challenging the

The **Tulane Institute on Water Resources Law and Policy** is a program of the Tulane University Law School.

The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and stewardship of water.

Coming up:

[18th Annual Conference on Litigating Takings Challenges to Land Use & Environmental Regs.](#)

September 25, 2015

University of Maryland School of Law
Baltimore, MD

Water jobs:

[Virginia Energy Attorney](#)

Southern Environmental Law Center
Charlottesville, VA

[MRD & Natural Infrastructure Economist](#)

(Two Year Postdoc Position)

Environmental Defense Fund

Washington, DC, New York City, or Boston, MA

[Attorney](#)

Community Water Center
Sacramento, CA

Tulane Institute on Water Resources Law & Policy

6325 Freret Street, 1st Floor

New Orleans, LA 70118

504-865-5982

<http://www.law.tulane.edu/tlscenters/waterlaw/>

TWITTER: [@TulaneWaterLaw](#)

rule would be likely to succeed in proving that the rule reaches beyond what the Clean Water Act allows and/or that it was improperly issued. He also noted that the states would be significantly harmed if the rule were to go into effect stating that, “Once the rule takes effect, the states will lose their sovereignty over intrastate waters that will then be subject to the scope of the Clean Water Act”. We feel obliged to point out that in reaching that conclusion the Judge almost certainly goes too far. When it comes to water, federal jurisdiction under the Clean Water Act does not eliminate or preempt state sovereignty over any waters as evidenced by state laws dealing with water use, access and drainage.

For the rest of you, the rule goes into effect today, August 28. (A similar challenge was declined earlier in the week in by a Federal Judge in West Virginia). Even if you are in one of the winning states, don't expect things to be much different since, rightly or wrongly, something very similar to the proposed rule will likely be used on a case specific basis in order to comply with the Supreme Court's less than clear directives.

It's the Real Real Thing—Water

First there was water to slake your thirst, but it sometimes came with nasty germs that could lay a person or community out. Next came alcohol which is wet, germ resistant, and [pleasantly mixable with water](#) but not really a replacement for H₂O, unless you are one of [14%](#) of Britons who apparently drink more alcohol than water. Next up, flavored boiled water (coffee and tea) and then fizzy sugar water or soft drinks. And so our beverage world looked until a marketing genius came up with the idea of selling sodas without the flavoring, sweetener, or coloring. Bottled water. Who knew that could be a thing? But it is a really big thing. So much so that bottled water is expected to [outsell sodas](#) by 2017. Just why bottled water (now enhanced with vitamins, proteins, [head clearing nanobubbles and electrolytes](#), flavors and even sugar) is kicking soda's can and trumping the far more economical but always refreshing tap water is not clear. Maybe it has something to do with those flavors, bubbles, and sweeteners. [Meet the new boss, same as the old boss?](#)

New Orleans to Water: Next Time We Will be Ready. Really, We Have Plan

It has been heck of a week here in New Orleans following a heck of a decade occasioned by the flooding associated with Hurricane Katrina but more truly caused by a litany of human hubris and errors. Days and days of panels, programs, interviews and visits by our current and two former Presidents could be boiled down to two questions: Is the city (which needs to include more than the city itself) safe and what more needs to be done? The answers (also boiled down) are: the region is safer but not safe enough and plenty more needs doing. A big part of both answers rests on the region's lingering vulnerabilities that stem from a collapsing coast, climate change and sea level rise, and generations of less-than-smart growth. But that might be about to change if the City of New Orleans actually moves ahead with the new [Resilient New Orleans](#) resilience strategy (supported by a grant from the Rockefeller Foundation) released by Mayor Mitch Landrieu earlier this week. That strategy calls for the City to manage water and growth inside its boundaries and to partner with its neighbors and others to make progress on restoring wetlands and responding to climate change (the latter being a topic [Louisiana Governor Bobby Jindal](#) urged President Obama not to touch on his visit to the City). It will take more than words to keep New Orleans and South Louisiana safe in the face a coast that is [changing](#) as fast as Louisiana's, but if the strategy leads to action then it might be what is celebrated ten years from now.